

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RELATIONAL FUNDING CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 01-821-SLR
)	
TCIM SERVICES, INC.,)	
)	
Defendant.)	

MEMORANDUM ORDER

I. INTRODUCTION

On December 11, 2001, plaintiff Relational Funding Corporation ("RFC") filed this action against defendant TCIM Services, Inc. ("TCIM") alleging that TCIM breached a contract under a lease by failing to provide notice of its intent to terminate the lease and by failing to return the equipment of the lease. Consequently, RFC is seeking return of the equipment, plus damages. Currently before the court is RFC's motion for summary judgment, TCIM's motion for summary judgment as to liability and TCIM's motion for summary judgment as to damages. (D.I. 60, 62, 64) For the reasons stated below, the motions are denied.

II. BACKGROUND

On December 16, 1997, defendant TCIM entered into a Master Lease Agreement ("Lease"), as lessee, with Varilease Corporation ("Varilease") (a non-party), as lessor, for certain computer

equipment. (D.I. 1 ¶ 5) On January 1, 1998, Varilease sold all of the equipment in dispute, assigning all of its rights, title, and interest in the Lease to plaintiff RFC through the Purchase and Sale Agreement and Assignment of Lease ("Assignment Agreement"). (D.I. 37, Ex. A))

RFC alleges that TCIM defaulted under the terms of the Lease by failing to give the required notice of its intent to terminate the Lease in accordance with Paragraph 2(b) of the Lease. (D.I. 1 ¶ 14) RFC also alleges that TCIM has defaulted under the terms of the Lease because the majority of the equipment under the Lease has not been returned and a substantial portion of the equipment that was returned did not match the equipment that was given out under the Lease. (Id.)

III. DISCUSSION

TCIM argues that RFC is not entitled to enforce the Lease because TCIM was not notified of the assignment of the Lease to RFC. This argument has no merit. Paragraph 10 of the Lease specifically grants TCIM's consent to assignment of the Lease.¹

¹Under the terms of the Lease:

10. Assignment

- (a) Lessee acknowledges and understands that Lessor may assign to a successor, financing lender and/or purchaser (the "Assignee"), all or any part of the Lessor's right, title and interest in and to the Lease and the Equipment and Lessee hereby consents to such assignment(s). In the event Lessor transfers or assigns, or retransfers or reassigns, to an Assignee

The Lease was validly assigned to RFC. The Lease does not place an affirmative obligation on the assignee or assignor to notify TCIM of the assignment. The consequence of the fact that TCIM was not notified of the assignment is that TCIM was performing under the terms of the Lease if it continued to direct payment and performance to the original Lessor Varilease. TCIM has not

all or part of Lessor's interest in the Lease, the Equipment or any sums payable under the Lease, whether as collateral security for loans or advances made or to be made to Lessor by such Assignee or otherwise, Lessee covenants that, upon receipt of notice of any such transfer or assignment and instructions from Lessor,

- (i) Lessee shall, if so instructed, pay and perform its obligations under the Lease to the Assignee (or to any party designated by Assignee), and shall not assign the Lease or any of its rights under the Lease or permit the Lease to be amended, modified, or terminated without the prior written consent of Assignee; and
- (ii) Lessee's obligations under the Lease with respect to Assignee shall be absolute and unconditional and not be subject to any abatement, reduction, recoupment, defense, offset or counterclaim for any reason, alleged or proven, including, but not limited to, defect in the Equipment, the condition, design, operation or fitness for use of the Equipment or any loss or destruction or obsolescence of the Equipment or any part, the prohibition of or other restrictions against Lessee's use of the Equipment, the interference with such use by any person or entity, any failure by Lessor to perform any of its obligations contained in the Lease, any insolvency or bankruptcy of Lessor, or for any other cause[.]

(D.I. 1, Ex. A at ¶ 10(a)(i)-(ii))

alleged that it directed any disputed lease payments to Varilease. TCIM's motion for summary judgment as to liability is denied.

RFC argues that TCIM failed to timely provide notice of termination of the Lease and, thus, is liable for breach of contract. TCIM asserts that proper notice was provided pursuant to the Lease and the parties' course of dealing. The court finds that a genuine issue of material fact exists as to whether notice of termination was properly sent by TCIM. A genuine issue of material fact also exists with respect to the amount of damages RFC is entitled to in the event TCIM did not properly terminate the Lease.

IV. CONCLUSION

Therefore, at Wilmington, this 13th day of May, 2003;

IT IS ORDERED that:

1. Plaintiff's motion for summary judgment (D.I. 60) is denied.

2. Defendant's motion for summary judgment as to liability (D.I. 62) is denied.

3. Defendant's motion for summary judgment as to damages (D.I. 64) is denied.

Sue L. Robinson
United States District Judge